

122565

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PHOENIX

THIS AGREEMENT is entered into this date November 30th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER (the "City").

I. DEFINITIONS

"Accelerated Schedule" means accelerating the final design elements of a new traffic interchange located at Interstate 17 (I-17) and Dove Valley Road from fiscal year (FY) 2021 to FY 2008. Exhibit A depicts the accelerated schedule of the project, attached hereto and made a part hereof.

"Agreement" means this intergovernmental agreement for the Project, as the same may be amended or supplemented from time to time.

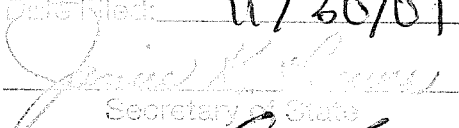

"City" means the City of Phoenix, Arizona.

"City Advance" means those funds to be advanced by the City to the State, for the sole purpose of accelerating the final design elements of the Project to be completed in FY 2008 for an estimated amount of \$1,729,743.00

"City LGIP Account" means the interest bearing account established by the City with the State Treasurer's Local Government Investment Pool, containing monies funded by the City for the City Advance and any other funds provided by the City for the Project.

"Consultant" means the State's engineering consultant.

"Department" means the Arizona Department of Transportation.

NO. 29455
Filed with the Secretary of State
Dated: 11/30/07

Secretary of State
By: 

"Investment Interest" means interest earnings resulting from the investment of the unused portion of the City Advance and City Contribution while such funds are held in the City LGIP Account. All such Investment Interest shall remain in the City LGIP Account and shall be applied to the construction costs of the Project or repaid to the City and for the benefit of the City, as set forth in this Agreement. Only interest to be paid is in accordance with said City LGIP Account.

"LGIP" means the Local Government Investment Pool established with the State Treasurer's office on behalf of the City.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Project" means the acceleration of the preparation of the final design documents and final environmental assessment (EA) to applicable State standards and specifications, including but not limited to Cultural Resource Surveys and Studies and an Army Corps of Engineers Section 404 nationwide Permit, for a new traffic interchange (TI) located at I-17 and Dove Valley Road.

"RTPFP" means the Regional Transportation Plan Freeway Program.

"State" means the State of Arizona acting by and through the Department of Transportation.

"State's Fiscal Year" means the fiscal year, which begins on July 1st and ends on June 30th of the following year.

"State Program Funds" means the funding designated and approved by the Maricopa Association of Governments in the RTPFP of the projects, anticipated to be programmed in FY 2021.

"State Transportation Board" or "Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 et. seq.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section §28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by City Charter Chapter II, Section 2.i. to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Incident to the State's improvements to I-17, the City requests the State to accelerate the preparation of the final design documents and final environmental assessment (EA) to applicable State standards and specifications for a new traffic interchange (TI) located at Dove Valley Road, to include but not limited to Cultural Resource Surveys and Studies and an Army Corps of Engineers Section 404 nationwide Permit, herein referred to as the "Project". The City agrees to advance the funding to accomplish the Project, for an estimated cost of \$1,729,743.00. The initial 30% design was accomplished per JPA 06-152, attached hereto by reference.

4. The State agrees to recommend to the State Transportation Board that the State accelerate the final design of the traffic interchange at Dove Valley Road from its program Fiscal year of 2021 to 2012 of the Regional Transportation Program Freeway Plan (RTPFP). Upon approval from the State Transportation Board, the State will reimburse the City on or after July 1, 2011, with RTPFP funds for all

costs incurred in the acceleration of the final design elements of the Project, currently estimated at \$1,729,743.00.

5. The Parties hereto agree and acknowledge to the following conditions: **a)** the amounts referenced in this Agreement are subject to change; **b)** the estimated amounts may change substantially; and **c)** the Parties will perform their responsibilities consistent with this Agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

III. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement, assist the City with establishing a City LGIP Account with a deposit of \$1,729,743.00 for the estimated costs of the Project, which shall be available to the State as required to pay monthly actual Consultant payments of the Project. Interest on the City LGIP Account shall be for the benefit of the City, whether available to pay for Project costs or reimbursed upon completion of the Project.

b. Coordinate with the City to accelerate the Project.

c. Upon receipt of the City's initial deposit of \$1,729,743.00, retain and contract with professional design and environmental consultants (the "Consultants"), to prepare final design documents and final environmental assessment (EA) to applicable State standards, including but not limited to Cultural Resource Surveys and studies and an Army Corps of Engineers Section 404 nationwide Permit.

d. Provide all coordination as required, with Federal Highway Administration (FHWA) and other agencies affected by this Project, including required approvals as appropriate to this effort.

e. Provide the City the design documents at the 60% and 95% stages for review and comment. Incorporate the City's comments and upon completion, provide the City a copy of the final design documents.

f. Administer the Consultants contract and make all payments to the Consultants. Confer with the City on any design and environmental Consultant related contract modifications. Be responsible for any Consultant claims for extra compensation due to delays attributable to the State.

g. Draw down the City LGIP Account as necessary to make monthly Consultant payments associated with the Project. Provide the City with a monthly report showing the progress of the Project draws against the City LGIP Account. Notify the City if additional funds are required as necessary for deposit into the City LGIP Account during the Project.

h. Agree that the amount deposited into the City LGIP Account, any Investment Interest earned on the balance in the City LGIP Account and any other funds provided by the City, will be used by the State solely to pay the costs to accelerate the Project described herein, per the estimated Accelerated Schedule, as shown on Exhibit A.

i. Upon completion of the Project, provide the City a recapitulation of the total Project costs and invoice the City any difference between the estimated amounts advanced by the City and actual costs of the Project. Any additional design changes requested by the City will be borne by the City and include a fixed rate of 5% for the State's design, review and administration costs for the Project.

j. Upon acceptance of the Project by the State and within 30-days of final accounting of the Project, unless otherwise agreed to by the City in writing, remit to the City any remaining balance of the City LGIP Account including, but not limited to, the City LGIP funds, any Investment Interest earned and any other funds provided by the City and used for the acceleration of or contribution towards the Project. A final accounting will separately address the City Advance from the City Contribution to determine any reimbursements.

k. Recommend approval by the State Transportation Board to program the actual amount of RTPFP funds to reimburse the City for the acceleration of the final design of the Project.

l. Upon approval by the State Transportation Board of the RTPFP funding and receipt of an invoice from the City, remit the total Project costs on or after July 1, 2011, currently estimated at \$1,729,743.00.

2. The City shall:

a. Within thirty (30) calendar days of the execution of this Agreement and with assistance from the State, establish the City LGIP Account and deposit, in an amount not to exceed \$1,729,743.00, which shall be available to the State as required to pay monthly actual Consultant payments for the Project. Interest on the City LGIP Account shall be for the benefit of the City, whether available to pay for Project costs or reimbursed upon completion of the Project. Authorize the State to be the sole signatory on said City LGIP Account.

b. Coordinate with the State to accelerate the Project.

c. Review and provide written comments to the State at the 60% and 95% completion within 10 business days of receipt of the design documents. Be responsible for any costs for design changes requested by the City. Be responsible for any related design and environmental Consultant(s) claims for extra compensation attributable to the City.

d. Upon completion, acceptance and receipt of the final design documents, be responsible for actual costs associated with the Project, including a fixed rate of 5% for the State's design, review and administration costs for any design changes requested by the City.

e. If necessary, upon completion of the Project and receipt of a recapitulation of the Project costs incurred by the State, remit to the State any difference between the estimated amounts paid by the City and the actual costs of the Project. Any additional design changes requested by the City will include a fixed rate of 5% for the State's design, review and administration costs for the Project.

f. Upon approval of the RTPFP by resolution of the State Transportation Board, on or after July 1, 2011, invoice the State for the actual amount advanced by the City for the Project, currently estimated at \$1,729,743.00.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements. This Agreement may be cancelled at any time prior to the notice to proceed for the Consultant's contract, with 30-days written notice to either party. Should the City fail to fulfill its obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the City shall be responsible to the other party for all costs incurred up to the time of the withdrawal.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers..

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract to both Parties, who shall be afforded the same rights and interests under this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State or City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or City at the end of the period for which the funds are available. No liability shall accrue to the State or City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes Sections 12-1518, as applicable.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX : 602-712-7424

City of Phoenix
Street Transportation Director
200 W. Washington - 5th floor
Phoenix, AZ 85003-1611
FAX : 602-495-2016

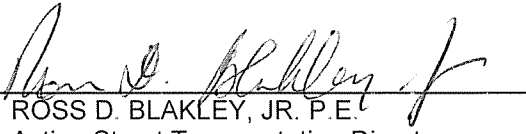
Arizona Department of Transportation
Financial Management Services
206 South 17th Avenue, Mail Drop 200B
Phoenix, AZ 85007
FAX : (602) 712-6672

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein it the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

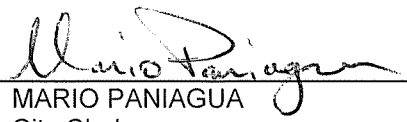
CITY OF PHOENIX, a Municipal
Corporation, Frank Fairbanks, City Manager

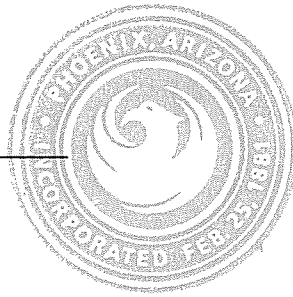
STATE OF ARIZONA
Department of Transportation

By 
ROSS D. BLAKLEY, JR. P.E.
Acting Street Transportation Director

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST

By 
MARIO PANIAGUA
City Clerk



G:\JPA 07-118-Phoenix
I-17/Dove Valley TI-Final Design
08August2007-Ig
Revised 8/17/07 ghc
Revised and FINAL 10/17/07 Ig

EXHIBIT A

JPA 07-118 I

I-17 Traffic Interchange at Dove Valley

Project No.: 17 MA 222 H7197 01D

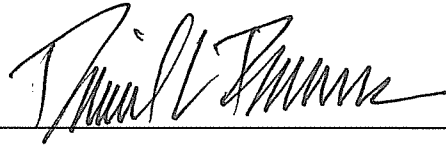
ACCELERATED SCHEDULE :

MILESTONE	DATES
NTP	SEPTEMBER 24, 2007
STAGE III (60%)	OMITTED
STAGE IV (95%)	JANUARY 21, 2008
FINAL P, S & E	APRIL 7, 2008
BID ADVERTISEMENT	MAY 2008

APPROVAL OF THE PHOENIX CITY ATTORNEY

I have reviewed the above-referenced proposed Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX, and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 31st day of October 2007

A handwritten signature in black ink, appearing to read "D. Michael J. ...", written over a horizontal line.

ACTING City Attorney

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action: <input type="checkbox"/> Bid Award License Application <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other <input type="checkbox"/>	OR	Legal Document: <input checked="" type="checkbox"/> Ordinance Resolution <input type="checkbox"/> Emergency Clause? <input type="checkbox"/> (for use only w/ord. or res. requests)
IMPACTED DISTRICT(S)	DISTRICTS 1, 2		
SUBJECT	AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - DOVE VALLEY ROAD INTERCHANGE		
REQUESTED AGENDA DATE	6/21/2006	PREPARED BY	Name J. Donald Herp Department Street Transportation Phone 262-4872
APPROVALS	Division Head: Department Head:	J. Donald Herp Ross D. Blakley, Jr., P.E.	If prepared for another department: Department Name: Approval:
BID AWARD INFORMATION	Bid Surety Required? <input type="checkbox"/> Submitted by Low Bidder? <input type="checkbox"/> Contract Required? <input type="checkbox"/>	Performance Surety Required <input type="checkbox"/> Amount? _____ Requisition No. _____	
CONTRACT INFORMATION	Contract Amendment? <input type="checkbox"/> If Yes, Current Contract No. _____ Approved by: Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> on Date: _____ Formal Action <input type="checkbox"/>		
BUDGET INFORMATION	\$ 2,500,000.00 To Be Encumbered? <input checked="" type="checkbox"/> Source of Funds: Fiscal Year? 2006/07 AHUR Capital Reserve Fund (1393) Fund Center(s) (SAP-FM): ST85100285 Commitment Item(s) (SAP-FM): 510130 Availability of Funds Approval Lauri L. Wingenroth		
CITY MANAGER'S OFFICE	Approved by Thomas E. Callow, P.E. 6/12/06		CM Control No. 126
CITY CLERK DEPARTMENT	Council Action Taken: Adopted Ordinance Number: S-33142 Resolution Number: _____ Comments: _____		
	RCA No. 52649 Contract No. _____ Meeting Date 6/21/2006 Item No. 116		

ITEM

DISTRICTS 1, 2

**AGREEMENT WITH ARIZONA
DEPARTMENT OF
TRANSPORTATION - DOVE
VALLEY ROAD INTERCHANGE**

Request City Council authorization for the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Arizona Department of Transportation for the advance design of the Dove Valley Road interchange on I-17 and for the City Controller to disburse funds.

The advance design and eventual right-of-way and construction of this interchange will materially benefit the City by providing convenient freeway access for anticipated major new developments adjacent to I-17 and Dove Valley Road.

Under the terms of the agreement, the City will loan the regional freeway program up to \$2.5 million of design project costs. The City will be reimbursed for the principal of this loan by regional freeway funds in fiscal year 2021. Regional freeway funds will also reimburse the City one-half of the interest cost of the City loan.

ADOT will design the interchange. The anticipated start of design is fall 2006.

Financial Impact

Funding for this agreement is available from Arizona Highway User Revenue (AHUR) Capital Reserve Funds.

Citizen Notification

Several public meetings have been held by ADOT to discuss the new interchanges and widening proposed for I-17 in this area. ADOT will also conduct a public meeting during the design phase of the project.

ORDINANCE NO. S-33142

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO ADVANCE THE DESIGN OF THE DOVE VALLEY ROAD INTERCHANGE AT INTERSTATE 17; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR PURPOSES OF THIS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation to advance the design of the Dove Valley Road interchange at Interstate 17.

SECTION 2. The City Controller is authorized to disburse funds in the amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) for purposes of this Ordinance.

PASSED by the Council of the City of Phoenix this 21st day of June, 2006.



ATTEST:

Clarice Quinlan City Clerk

A handwritten signature, likely of the Mayor, is written over a horizontal line.

MAYOR

JUN 20 PM 12:56
CITY CLERK DEPT.

APPROVED AS TO FORM:


William Back Acting City Attorney
MB

REVIEWED BY:

Franklin Bank City Manager

DLB:tml/CM 1267/6-21-06/650804v1

Ordinance No. S-33142

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="748 65 938 247"></div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007003548 (**JPA 07-118-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Phoenix, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 26, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:96784
Attachment